

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF
AMERICA,

Plaintiff,

v.

CARLTON O. BANKHEAD,

Defendant.

Case No. 2:18-cr-20784
District Judge Paul D. Borman
Magistrate Judge Anthony P. Patti

**BRIEFING SCHEDULE FOR THE GOVERNMENT’S MOTION FOR AN
ORDER FINDING WAIVER OF ATTORNEY-CLIENT PRIVILEGE (ECF
No. 36), AND ORDER REGARDING THE STATUS OF CERTAIN
MATTERS**

This matter came before the Court for consideration of Defendant, Carlton O. Bankhead’s, November 15, 2019 motion for injunctive relief (ECF No. 34), emergency motion for injunctive relief (ECF No. 42), and motion to appoint counsel (ECF No. 57), and Plaintiff’s motion for an order finding waiver of attorney-client privilege (ECF No. 36), all relating to Defendant’s underlying motion to vacate his sentence pursuant to 28 U.S.C § 2255 (ECF No. 29). Judge Borman referred these motions to me for a hearing and determination. (ECF Nos. 35, 37, 44, 55 & 62.) A hearing was held on March 11, 2020, at which counsel for Plaintiff appeared in person and Defendant appeared, *in pro per*, from prison in

Kansas by telephone, and the Court entertained oral argument regarding the motions.¹

Upon consideration of the motion papers and oral argument, and for all of the reasons stated on the record by the Court, which are hereby incorporated by reference as though fully restated herein, the Court orders and states the following:

- The complaints made in Defendant's unauthorized letters to the Court (ECF Nos. 46, 48, 52, 53 & 54) are **DEEMED MOOT**, as confirmed by Defendant on the record, because they address Defendant's request for bond, which the Court has already denied (ECF Nos. 51 & 63).
- As directed by Defendant on the record, Defendant **WITHDRAWS AS MOOT** his motions for injunctive relief (ECF Nos. 34 & 42), having already received relief by virtue of being housed at a new location.
- The Court takes Defendant's motion for appointment of counsel (ECF No. 57) **UNDER ADVISEMENT**, and **HOLDS THE MOTION IN ABEYANCE** pending the Court's decision on Plaintiff's motion for an order finding waiver of attorney-client privilege (ECF No. 36), and the Court's determination as to whether discovery and/or an evidentiary hearing may be necessary to decide Defendant's § 2255 motion (ECF No. 29).
- As directed by the Government's counsel on the record, the United States **WITHDRAWS** the portion of its motion for an order finding waiver of attorney-client privilege suggesting that Defendant waived the work product "privilege," or requesting any such work product, while reserving the right to reiterate that request in the future, if appropriate. (ECF No. 36, PageID.179-183.)

¹ The hearing was set to take place by videoconference, but despite valiant efforts on the morning of the hearing, technical difficulties made this impossible.

Finally, Defendant is ordered to file a **WRITTEN RESPONSE** to Plaintiff's motion for an order finding waiver of attorney-client privilege (ECF No. 36), which he acknowledges having received, by **Friday, April 3, 2020**. In his response, Defendant shall either: (1) advise the Court that he is withdrawing his § 2255 motion (ECF No. 29), thereby mooted the motion regarding waiver; or (2) if he chooses to proceed with his § 2255 motion, address the merits of the arguments made in Plaintiff's motion (ECF No. 36). The Government will then have until **Monday, April 13, 2020**, to file a written reply, if it so chooses.

IT IS SO ORDERED.

Dated: March 13, 2020



Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE